

Attorney Docket No.: J6699/1(C)
Serial No.: 10/050,238
Filed: January 16, 2002
Confirmation No.: 6809

RESPONSE TO NOTIFICATION OF NON-COMPLIANCE
WITH 37 C.F.R. §1.192(c) MAILED JUNE 11, 2009

Sir:

Applicants have received a Notification of Non-Compliance with 37 CFR §1.192(c) mailed June 11, 2009.

Specifically, it appears that the Examiner has noted a typo in Section VI heading I (at page 11 of the Appeal Brief) with regard to claims which have been rejected. The same mistake is made at Section VII, heading I (page 12 of the Appeal Brief) for the same language applicants used at page 11.

In response, applicants submit a new page 11 and a new page 12. In both cases, heading I has been changed to read as follows:

I. Claims 4-7 [sic 5-7], 9-13, 20, 22-23 are said to be obvious under 35 USC §103(a) over U.S. Patent No. 6,080,708 to Glenn, Jr. et al. (equivalent to WO 96/25144), in view of U.S. Patent No. 6,395,640 to Tsauro.

Please replace each of pages 11 and 12 with new pages 11 and 12 where heading I has been changed at noted.

No fee is believed due, in connection with this response. However, if any fee is due, please charge the amount of said fee to Deposit Account No. 12-1155.

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If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Koatz', is written over a horizontal line.

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VI. Grounds of Rejection to be Reviewed Upon Appeal

The Grounds of Rejection to be Reviewed Upon Appeal are defined by the Examiner's rejections and are as follows:

- I. Claims 4-7 [sic 5-7], 9-13, 20, 22-23 are said to be obvious under 35 U.S.C. §103(a), over U.S. Patent No. 6,080,708 to Glenn, Jr. et al. (equivalent to WO 96/25144), in view of U.S. Patent No. 6,395,640 to Tsaor.
- II. Claims 19 and 21 are said to be obvious, under 35 U.S. C. §103(a), over U.S. Patent No. 6,080,703 to Glenn, Jr. et al. (equivalent to WO 96/25144), in view of U.S. Patent No. 6,395,690 as applied to claims above, and further in view of U.S. Patent No. 5,004,598 to Lochhead et al.

VII. Argument

- I. Claims 4-7 [sic 5-7], 9-13, 20, 22-23 are said to be obvious under 35 U.S.C. §103(a), over U.S. Patent No. 6,080,708 to Glenn, Jr. et al. (equivalent to WO 96/25144), in view of U.S. Patent No. 6,395,640 to Tsauro.

The present independent claim 22 is directed to a process which ensures that sufficient benefit agent is retained on the skin, after rinsing or towel drying, without leaving the skin excessively oily (page 2, lines 1-4). Conventional oil-in-water emulsions are poorly retained and, conversely, water-in-oil emulsions are well retained but excessively greasy (page 2, lines 12-17).

In order to achieve better retention of oil on skin while also providing less greasy feel, applicants discovered the use of oil-in-water compositions where oil (e.g., petrolatum, sunflower seed oil) is specifically structured with a structurant forming a stable 3-D network comprising finely divided solid particles having a particle size below about 25 microns. The structurant, as per amended claims, is specifically trihydroxystearin. However, the structurant, whatever it is, must still meet the “finely divided” and “particle size” requirements of the claim.

Applicants have argued that, to the extent trihydroxystearin is disclosed specifically in U.S. Patent No. 6,080,708 to Glenn, Jr. (hereinafter, “Glenn”), it is disclosed as a preferred aqueous phase stabilizer (col. 5, lines 18-23). It is also disclosed in specific examples where, for example, petrolatum is used in the oil mineral phase and trihydroxystearin is used as aqueous phase stabilizer (see Examples 1-4 at col. 18, for example).

In response, the Examiner argues:

- 1) Glenn broadly teaches structurants for the oil-phase which include organic structurants such as fats, fatty acid derivatives, solid fatty esters, fatty